

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Level 3
Communications, LLC's Request
for a Streamlined Process for Acquisitions or
Transfers of Control

ISSUE DATE: February 15, 2007

DOCKET NO. P-5733/PA-06-1310

In the Matter of a Commission Investigation
into Possible Modification of its Procedure
for Reviewing Non-Dominant Carrier
Acquisitions and Transfer of Control
Transactions

DOCKET NO. P-999/CI-07-192

ORDER CLOSING DOCKET AND
OPENING GENERIC PROCEEDING

PROCEDURAL HISTORY

On September 13, 2006, Level 3 Communications, LLC (Level 3 or the Company) filed a Petition requesting that the Commission authorize a streamlined process for a nondominant carrier to obtain administrative approval of transfer and financing transactions. Level 3 cited Minn. Stat. § 216A.03, subd. 7, which permits the Commission to designate categories of filings that can be deemed approved by the Commission after 60 days of filing, unless the Commission, a Commissioner, or any other person requests the filing be set for action by the Commission.

On October 13, 2006, the Minnesota Department of Commerce (the Department) filed comments recommending that the Commission open a generic proceeding to consider Level 3's proposal and the Department's recommended modifications for streamlined procedures for transfers of control.

On December 8, 2006, Level 3 filed additional information regarding its proposal for a streamlined approval process for transfer transactions. The additional information was an Order from the North Carolina Utilities Commission and the final Staff recommendation of the Louisiana Public Service Commission. This information shows that at least two other states are considering or have approved a streamlined approval process for transfers of control.

The Commission met on February 1, 2007 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Level 3's Proposal

Level 3 requested that the Commission adopt streamlined procedures for the approval of transfers of control. The Company stated that establishment of these streamlined procedures is authorized pursuant to Minn. Stat. § 216A.03, Subd. 7, which allows the Commission to designate categories or types of filings that would be deemed approved 60 days after filing. Level 3 stated that the dramatic changes in the telecommunications market support a streamlined approval process. The Company stated that its proposed streamlined approach was aligned with the Federal Communications Commission's (FCC's) review.

The Company clarified that the companies qualifying for FCC streamlined procedures would be non-dominant competitive interstate carriers and that its proposed streamlined procedures would not apply to incumbent local exchange carriers. The Company stated that to establish streamlined procedures, the Commission could simply issue a standing order outlining optional procedures for companies that meet certain criteria. The criteria proposed by Level 3 were that the streamlined procedures would apply to companies that file applications with the FCC for domestic Section 214 license transfers in accordance with 47 C.F.R. § 63.03.

In support of its request for streamlined procedures, Level 3 stated that an approval process longer than the FCC's 30-day approval process is burdensome to carriers subject to commercial needs. The Company stated that even when a carrier has limited operations or customers in a state, carriers certified in Minnesota must wait for the current administrative process to close a transaction. In today's rapidly changing telecommunications market, they continued, the current process presents substantial and unnecessary impediments in the marketplace. While awaiting approval, costs can increase or revenue opportunities may be lost. Adverse consequences can affect employees, vendors, customers and shareholders of competitive carriers. The Company also asserted that the current process wastes Commission and Department resources since most transactions are routine, non-controversial and uncontested.

II. The Department's Comments

The Department recommended that the Commission open a generic proceeding and solicit comments to consider the merits of Level 3's proposed streamlined approval process for acquisitions and transfers of control and the Department's proposed modifications of that process. The Department identified several issues it considered regarding Level 3's proposal and argued that these issues should be addressed in a generic proceeding rather than the current docket so that other parties can provide comments on the merits of the proposal.

III. The Commission's Analysis and Action

The Commission has the authority to designate certain types of filings as eligible for approval under Minn. Stat. § 216A.03, Subd. 7. Currently the Commission has designated four types of

filings as filings subject to approval without hearing under Minn. Stat. § 216A.03, Subd. 7.¹

The Commission finds that Level 3's petition and the Department's proposed modifications raise questions that are best addressed in a generic docket where all interested parties have an opportunity to comment. Similarly, the relief sought by the Company would affect many entities beyond those who have notice of this proceeding. The record would benefit from their participation. After discussion at the hearing, Level 3 did not object to the Department's recommendation that this matter would best be pursued in the context of a generic proceeding.

Accordingly, the Commission finds it appropriate to close the current docket and open a generic, industry-wide proceeding to consider the merits of Level 3's proposal and the Department's proposed modifications. As a first step in the generic proceeding, the Commission will, by separate document, issue notice to interested parties soliciting their comments.

ORDER

1. The Commission hereby closes this docket and initiates a generic, industry-wide proceeding: a Commission investigation into whether the Commission's current procedures for reviewing non-dominant carrier acquisitions and transfers of control should be modified, and if so, what those modified procedures should be. The generic proceeding is assigned to Docket No. P-999/CI-07-192.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling 651-201-2202 (voice) or 1-800-627-3529 (MN relay service)

¹ See *In the Matter of the Feasibility of Approving Without Hearing Certificates of Authority, in Accordance with Minn. Stat. § 216A.07, Subd. 7, STANDING ORDER DESIGNATING CERTAIN FILINGS AS FILINGS SUBJECT TO APPROVAL UNDER MINN. STAT. § 216A.03, SUBD. 7, Docket No. P-999/CI-00-634* (August 25, 2000).